



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: LEAH WALKER
Children and Maternal Health Division
Department of Medical Assistance Services

FROM: ELIZABETH A. MCDONALD
Special Counsel to DMAS

DATE: May 7, 2007

SUBJECT: Final Exempt Regulation to Expand FAMIS MOMS Eligibility

I have reviewed the attached final exempt regulation that will expand eligibility for the FAMIS MOMS programs from those with an income up to 166% of the Federal Poverty Level ("FPL") to those with an income up to 185% of the FPL. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate the final exempt regulation and if it comports with state and federal law.

Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Va. Code §32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the requirements of Article 2 of the Administrative Process Act and has not exceeded that authority.

The amendments to the regulation incorporate changes, required by Chapter 847, Item 301(D) of the 2007 Acts of the Assembly, which states that "The DMAS shall have the authority to amend the Family Access to Medical Insurance Security Plan and related regulations to expand medical coverage to pregnant women who are over the age of 19

who are ineligible for Medicaid and have annual family income less than or equal to 185 percent of the Federal Poverty Level...” Based on the foregoing, it is my view that the promulgation of these amendments is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §2.2-4006(A)(4)(a).

If you have any questions, please contact me at 786-3890.

cc: Kim F. Piner
Senior Assistant Attorney General